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IN THE
Supreme Court of the United States

OCTOBER TERM, 1945

No. 418

JEROME F. DUGGAN, TRUSTEE OF THE ESTATES OF CHRISTOPHER ENGINEERING COMPANY, AND NATIONAL AIRCRAFT CORPORATION, *Petitioner*.

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

No. 419

NATIONAL AIRCRAFT CORPORATION, *Petitioner*.

vs.

JAMES C. SANSBERRY, TRUSTEE OF THE ESTATE OF NATIONAL AIRCRAFT CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONERS' BRIEF

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Petitioners' Statement, Brief
and Argument

OPINIONS OF THE COURT BELOW.

The judgment below was by a majority of the judges and the opinions (3) are reported 149 Fed. (2d) 548, and are printed in the Record herewith filed: opinion of the

Honorable William M. Sparks, Circuit Judge (R. 91); opinion of the Honorable J. Earl Major, Circuit Judge, concurring in part only with the opinion of Judge Sparks (R. 100); and the dissenting opinion of the Honorable Charles G. Briggie, District Judge (R. 101).

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on April 2, 1945 (R. 105). A petition for rehearing was filed on May 7, 1945 (R. 106), and denied on June 11, 1945 (R. 107), Judge Briggie dissenting. The jurisdiction of this Court was timely invoked under Section 240 (a) of the Judicial Code as amended (28 USC 347 and 28 USC 350) and Section 24 (c) of the Chandler Act [11 USCA 47 (c)], and certiorari granted November 5, 1945 (R. 112).

STATEMENT.

The case has come to this Court on certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Circuit rendered in two appeals in which Jerome F. Duggan as Trustee in Reorganization for National Aircraft Corporation, a subsidiary debtor, and of Christopher Engineering Company, a corporation, principal debtor, by appointment of the United States Court of Bankruptcy for the Eastern Division of the Eastern District of Missouri in proceedings under Chapter X of the Chandler Act (R. 62) and the National Aircraft Corporation, a subsidiary debtor, by adjudication of the same Court (R. 61) respectively were appellants, and James C. Sansberry, trustee of the estate of National Aircraft Corporation, bankrupt, by appointment of the United States Court of Bankruptcy for the Southern District of Indiana in an ordinary bankruptcy proceeding pending in that Court, was appellee.

The appeals below were tried on a single record and determined by a single judgment (R. 105).

The appeal below was immediately from an order of the Referee in Bankruptcy for the Southern District of Indiana dated May 2, 1944 (R. 3), approved on review by the Judge (R. 68) confirming the sale of the real estate and major assets of the National Aircraft Corporation, had in an ordinary bankruptcy proceeding after the same corporation had been admitted to reorganization by the Missouri Court in a proceeding for the reorganization of its parent corporation, the Christopher Engineering Co. (R. 61).

(The bankruptcy courts involved will hereinafter be referred to as the **Indiana Court** and the **Missouri Court**, respectively; the parent corporation as **Christopher** and the subsidiary as **National**.)

The appeals below primarily involved a conflict of jurisdiction, over the assets of National, between the Indiana Court, as a court in ordinary bankruptcy, and the Missouri Court, as a reorganization court under Chapter X of the Chandler Act, as a result of which the Missouri Court was undertaking to conserve the National assets with a view to reorganization and the Indiana Court was simultaneously proceeding to sell and liquidate the same assets.

The Court below, by a majority of the Judges, affirmed the continued jurisdiction of the Indiana Court to sell the National assets in the proceeding in ordinary bankruptcy pending in that Court, notwithstanding the Missouri Court, prior to the sale had received and approved National's voluntary subsidiary debtor petition (R. 61) as a wholly owned subsidiary of Christopher then in

process of reorganization in the Missouri Court. The conflicting claims of jurisdiction arose from the following sequence of proceedings in the two Courts:

On **December 27, 1943**, the Missouri Court approved the voluntary debtor petition of Christopher for reorganization under Chapter X of the Chandler Act (R. 92-56) and, subsequently, on **April 19, 1944**, received and approved the voluntary subsidiary debtor petition of National and admitted it to the pending reorganization proceedings of Christopher as a wholly owned subsidiary of the principal debtor, and enjoined the respondent, Sansberry, from proceeding with the sale, which subsequently became the subject matter of the appeals below (R. 62).

On **January 21, 1944** (R. 7), creditors of National had filed a petition in involuntary (ordinary) bankruptcy against it in the Indiana Court and it had been adjudicated a bankrupt on February 7, 1944 (R. 7), and on March 7, 1944, respondent Sansberry was appointed trustee in ordinary bankruptcy (R. 8); all before its subsidiary debtor petition was filed in Missouri; but after Christopher's debtor petition had been approved by the latter Court.

On **March 21, 1944**, Sansberry, the liquidating trustee appointed in the Indiana proceedings, filed his petition to sell the real estate and personal property of the bankrupt (R. 8) and on **April 6, 1944**, the Referee sustained the petition to sell (with minor exceptions) and directed that an auctioneer be employed and the property sold at public auction on **April 20, 1944** (R. 28).

On **April 19, 1944** (prior to the date fixed by the Indiana Court for the sale), the National intervened in the reorganization proceedings of Christopher then pending in the Missouri Court and filed its petition to be admitted

to reorganization in said proceedings as a subsidiary of Christopher (R. 58). In its petition it recited the ordinary bankruptcy proceedings pending against it in the Indiana Court and the order of adjudication and reference and the further fact that the Indiana Trustee had advertised a sale of its property to be held on the 20th day of April, 1944 (R. 59), and prayed that the Indiana proceedings be stayed and that the Indiana Trustee and his auctioneer be enjoined from selling the property (R. 60).

By judgment order on **April 19, 1944** (R. 61), the Missouri Court adjudged the National to be a wholly owned subsidiary of Christopher and authorized to file its petition in the pending proceedings of its parent company (R. 62); adjudged that the petition had been filed in good faith and approved the same and appointed petitioner Jerome F. Duggan Trustee in Reorganization with all the powers consistent with Chapter X, and authorized him to manage and operate the business of said subsidiary. The order approving the petition contained the usual injunctive and stay provisions and a specific injunction restraining James C. Sansberry, the Indiana Trustee, and his auctioneer, from selling or disposing of the assets (R. 65).

The order of the Missouri Court was served on Sansberry and his auctioneer, the Winternitz Company, by the United States Marshal for the Southern District of Indiana on **April 20th**, and before the sale was cried (R. 67, 41, 34).

Notwithstanding the order and injunction issued by the Missouri Court, Sansberry, the Trustee, and his auctioneer "upon the advice of his counsel, with the knowledge of the Referee in Bankruptcy, concluded to proceed with the sale" (R. 34) and on **April 21, 1944**, made formal report of his proceedings and motion to confirm to the

Referee, who set the same for hearing on **April 25, 1944**, on which last date the Referee continued the hearing on the Report of Sale to **May 2, 1944**, upon the representation that:

"The Trustee and his counsel intend to proceed to St. Louis, Missouri, to ascertain the facts surrounding the entering of an order by the Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in the matter of Christopher Engineering Company, in proceedings for the reorganization of a corporation, being Cause No. 10947 in said Court, whereby the Trustee in Bankruptcy herein was restrained and enjoined from doing any act or thing whatsoever affecting the property and assets of the above named bankrupt."

The Referee ordered that pending the "holding of said further hearing" the Indiana Court retain full and complete jurisdiction over all the assets of the bankrupt (R. 43).

On **May 2, 1944**, the Referee entered the order immediately involved in the appeal below approving and confirming the sale (R. 3).

REFEREE'S CONCLUSIONS.

The order of the Referee approving the sale was based upon his conclusion:

"* * * the assets offered for sale * * * are in the custody and control of the United States District Court for the Southern District of Indiana and that no application for the release of said assets has been filed in said Court, and that title to said assets is in said James C. Sansberry, as trustee in bankruptcy of the above named bankrupt, and the Referee further finds that said assets being in the custody and control of said Court, and the matter having been referred

to the Referee, it is the duty of the Referee to determine whether or not said Report of Sale should be approved and the sales to the highest bidders for the assets of the bankrupt confirmed, and that if said sale was fairly held and adequately attended and said bids are adequate and reasonable, the sales to said bidders should be confirmed." (R. 3.)

PETITIONERS' APPEAL AND MOVE TO STAY PROCEEDINGS.

On May 10, 1944, the National Aircraft Corporation and Jerome F. Duggan, its reorganization trustee, appointed by the Missouri Court, filed their separate **petitions for review** of the order confirming the sale (R. 44-48) and their separate **"Motions and Suggestions to Stay Proceedings"** (R. 47-53), assigning as grounds therefor the grounds assigned in the petition for review, namely, that the order was **erroneous and in excess of the jurisdiction** of the Referee because of the proceedings had in the Missouri Court and the stay therein entered. Simultaneously with the Petitions to Review and Motion to Stay, which were filed with the Referee, Jerome F. Duggan, the Missouri reorganization trustee, filed with Judge Baltzell, Bankruptcy Judge in Indiana, his **"Suggestions of Superseding Reorganization Proceedings and Motion to Stay Proceedings,"** together with a certified copy of National's subsidiary debtor petition and the order of the Missouri Court approving it (R. 56).

REFeree'S ORDER AFFIRMED BY JUDGE.

On June 5, 1944, the Judge (Indiana) overruled the petitions of National Aircraft Corporation and Duggan, Trustee, for review, without any express ruling on Duggan's **"Suggestions of Superseding Reorganization Proceedings and Motion to Stay Proceedings."** (R. 68).

On June 29, 1944, Duggan's Notice of Appeal and Assignment of Error and Statement of Points Relied on (R. 71) were filed and on the same day National Aircraft Corporation's Notice of Appeal (R. 78) and Assignments of Error and Points (R. 75) were filed.

THE ISSUES BELOW.

The errors assigned (R. 70-71) and points relied upon below (R. 71-75) were identical.

In substance they were that the Indiana Court was without jurisdiction to sell the assets because of the exclusive and superseding jurisdiction of the Missouri Court. That the order was void and in excess of jurisdiction and infringed on the Missouri Court's jurisdiction.

THE CONCURRENCE OF THE JUDGES BELOW.

The concurrence of the majority judges was in fact or substance upon the opinion of Judge Major (R. 100), which concurred with a similar conclusion of Judge Sparks found on page 94 of the Record in the second paragraph. The concurrence was limited to the conclusion that it was essential to the jurisdiction of the Missouri Court as supersessive to that of the Indiana Court, that it be established, either in the Missouri Court or in the Indiana Court (it is not clear) that the National was a subsidiary of Christopher on December 27, 1943, when the Christopher debtor petition was filed in the Missouri Court. In effect the Court ruled that the date when the relationship began could not be established by the implications of the judgment, but could only be established by express fact-finders of the Missouri Court or by extrinsic evidence and the burden of proof was upon the appellants.

The applicable paragraphs of the opinions follow:

Judge Major concluded:

"That the burden rested upon appellants (petitioners) to show that National was a subsidiary of Christopher on December 27, 1943, when Christopher filed its petition for a reorganization in that Court. Appellant failed to carry the burden in this respect. The most that the finding of the St. Louis Court discloses is that National was a subsidiary on April 19, 1944 * * * a showing based upon such a finding did not deprive the Indiana Court of jurisdiction; in fact it had no right to relinquish jurisdiction" (Opinion of Judge Major, R. 100).

Judge Sparks concluded:

"Before there could be jurisdiction" (in the Missouri Court) "We think it must have been established that National was a subsidiary * * * on December 27, 1943, when Christopher filed a petition for reorganization. * * *. These were jurisdictional facts, which of necessity must have been proved before the Court in Missouri could possibly obtain jurisdiction of National or oust the jurisdiction of the District Court in Indiana, and the burden was upon petitioners to establish those facts. This they did not do." (Opinion of Judge Sparks found in second paragraph on page 94 of the Record.)

THE DISSENTING OPINION BELOW.

Judge Briggie, dissenting, concluded: The integrity of the findings of the Missouri Court was not a matter for the consideration of the Indiana Court or the Court below on appeal, and that regardless of erroneous conclusions of fact or law the judgment must be accorded full faith and credit in the Indiana Court, which was only called upon to review the propriety of an order approv-

ing the sale of assets of the subsidiary in Indiana where such sale had been enjoined by the Missouri Court.

"The jurisdiction of the Missouri Court for purposes of reorganization is paramount and cannot here be challenged. Indiana must, in my judgment, yield to Missouri" (R. 101, 104).

QUESTIONS PRESENTED

In due time the petitioners applied to this Court for certiorari to test the ruling of the Circuit with respect to the conclusiveness of the Missouri judgments on collateral attack and the power of the Indiana Court to review the legal or factual basis of the judgment and to continue to exercise jurisdiction over and to sell the National assets in the ordinary proceedings in Indiana. There was also submitted to this Court the question as to the proper construction of the corporate reorganization provisions of the Chandler Act with respect to the right of subsidiary corporations to petition for reorganization before the Court, which has approved the parent's petition, notwithstanding an ordinary proceeding in bankruptcy is pending against the subsidiary in another District.

On November 5, 1945, the writ was granted in general terms (R. 112).

ASSIGNMENT OF ERRORS.

I.

The Court below erred in denying full faith and credit to the mandate and implications of the judgment order of the Missouri Court approving National's voluntary subsidiary debtor petition and erred in affirming the continued power of the Indiana Court to sell National's assets after the Missouri Court had admitted it to reorganization under

Chapter X of the Chandler Act and stayed the pending proceeding in ordinary bankruptcy and enjoined the respondent from selling the assets.

II.

Regardless of its power or lack of power collaterally to interpret the corporate reorganization provisions of the Chandler Act, or to review the legal or factual basis of the Missouri judgment and deny its full faith and credit, the Court below erred and interpreted the Chandler Act in a manner calculated to thwart the purposes of Congress, by denying to a reorganization Court sweeping, exclusive and supersessive jurisdiction over the debtor's assets wherever located.

SUMMARY OF THE ARGUMENT.

I.

The unambiguous judgment order of the Missouri Court was res judicata and binding on the Indiana Court and effectively stayed its power to sell National's assets.

(Unless otherwise noted references are to section numbers of the Chandler Act.)

A.

Constitution and Jurisdiction of the Respective Courts.

Both Courts are designated courts of bankruptcy with such jurisdiction as will enable them to exercise original jurisdiction under the Chandler Act.

Section 1 (a), 2 (a) [11 USCA 1 (a); 11 (a)].

Neither the Court below (7th Circuit) nor the Indiana Court have supervisory or appellate jurisdiction over the Missouri Court, which is in the Eighth Circuit.

The Indiana Court as an incident to a proceeding in ordinary bankruptcy had no statutory power to stay or supersede the jurisdiction of a reorganization court proceeding under Chapter X. The Missouri Court, on the contrary, proceeding under Chapter X, had express statutory authority to stay and supersede the jurisdiction of a court proceeding in ordinary bankruptcy:

"Section 111. Where not inconsistent with the provisions of this Chapter, the Court in which a petition is filed, shall, for the purposes of this Chapter, have exclusive jurisdiction of the debtor and its property wherever located." 11 USCA 511.

"Section 113. Prior to the approval of a petition the Judge may, upon cause shown, grant a temporary stay, until the petition is approved or dismissed, of a prior proceeding in bankruptcy * * * 11 USCA 513.

"Section 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy * * * 11 USCA 548.

"Section 149. An order, which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court." 11 USCA 549.

As a court of general jurisdiction over the subject matter (reorganization of corporations) the Missouri Court had power to hear and determine petitions invoking its jurisdiction and to make orders which were not subject to collateral attack.

Securities and Exchange Comm. v. United States Realty and Imp. Co., 310 U. S. 434-446, 84 L. Ed. 1293-1299.

Pennsylvania v. Williams, 294 U. S. 176-180, 79 L. Ed. 841-845.

B.

The judgment of the Missouri Court was *res judicata* and, with all its implications, conclusive as against collateral attack in the Indiana Court.

The only necessary party to a voluntary corporate reorganization proceeding is the corporation itself, hence, upon National filing its petition proposing that a plan be effected in the Missouri Court, there was fulfilled the necessary conditions prerequisite to jurisdiction or power to adjudge the petition on the merits and to enter a judgment impregnable to collateral attack, namely: Jurisdiction over the general type of action and jurisdiction of the necessary parties.

See "Principles of Corporate Reorganization,"
Thomas F. Finleiter (1937), page 139.

The principles of *res judicata* are applicable to questions of jurisdiction and the Missouri Court had power to determine its own jurisdiction, as against collateral assault.

Chicot County Drainage District v. Baxter State Bank, 308 U. S. 371-377, 84 L. Ed. 329-334.

Kalb v. Feuerstein, 308 U. S. 433, 439, 84 L. Ed. 370, 375.

Milliken v. Meyer, 311 U. S. 457, 462, 85 L. Ed. 278, 282.

International Tractor Co. v. International Harvester Co. (CCA 3), 120 Fed. (2d) 82-86.

Rippberger v. A. C. Allyn Co. (CCA 2), 113 Fed. (2d) 332-333.

"The principles of *res judicata* apply to questions of jurisdiction as well as to other questions."
Mr. Justice Brandeis.

American Surety Co. v. Baldwin, 287 U. S. 156, 166, 77 L. Ed. 231-238.

"Whether the suit was or was not one of which the Court had jurisdiction, there was certainly power in the Court to determine jurisdiction; and even if there was a lack of jurisdiction, it is well settled that a judgment based on an erroneous assumption of jurisdiction would not have been void or subject to collateral attack." Citing *Des Moines N. & R. Co. v. Homestead Co.*, 123 U. S. 552-557, 31 L. Ed. 202.

Nye v. U. S. (CCA 4), 137 Fed. (2d) 73-77.

Reorganization courts have a jurisdiction that is paramount and exclusive and cannot be affected by proceedings in other courts, whether state or federal and the only way of correcting error of the court taking jurisdiction of a reorganization proceeding is by appeal in the same action. Judge Lindley, Judge Sparks and Judge Major (the majority Judges below in the instant case) concurring.

Re Park Beach Hotel Building Corporation (CCA 7), (77b), 96 Fed. (2d) 886-891.

Warder v. Brady (CCA 4), 115 Fed. (2d) 89-93.

In re Maier Brewing Company, 38 Fed. Supp. 806-811, 812, 815.

See also:

Re Grayling Realty Corporation (77b), 74 Fed. (2d) 734.

Converse v. Highway, 107 Fed. (2d) 127.

Smith v. Trust Co., 139 Fed. (2d) 733.

Zelcznik v. Grand Riviera Theatre Co., 128 Fed. (2d) 533.

Pen-Ken Gas & Oil Co. v. Gas Co. (CCA 6), 137 Fed. (2d) 871.

Thompson v. King (CCA 8), 107 Fed. (2d) 307.

C.

The judgment carried with it, as against collateral attack, a presumption of regularity, and was not dependent upon express fact findings, see cases supra "B".

Even an inconsistency between the findings and the judgment does not overcome the presumption of regularity inherent in judgments of Courts of general jurisdiction.

Milliken v. Meyer, 311 U. S. 457.

An adjudication in bankruptcy is not subject to collateral attack.

Fairbanks Steam Shovel Co. v. Wills, 240 U. S. 642-649, 60 L. Ed. 841-846.

And an order approving a debtor petition would appear to be analagous to an order of adjudication.

By the express provisions of Section 149 (11 USCA 549), a judgment approving a debtor petition is immune to attack on jurisdictional grounds even in the same Court after the time for appeal has elapsed, namely: thirty days after the petition is approved. Section 24 (a), 11 USCA 48.

In re Loewers, Gambrinus Brewery Co., 141 Fed. (2d) 747-9.

Mar-Tex Realization Co. v. Wolfson, 145 Fed. (2d) 360-362.

See also Dissenting Opinion of Judge Briggie in this case below (R. 101), 149 Fed. (2d) 548, 553.

D.

In any event fact findings have no place in a judgment order.

See Rule 54, Rules of Federal Procedure, made applicable to bankruptcy by General Order 37 (11 USCA following Section 53).

Rule 54 is identical in substance with Equity Rule 71, which it supplanted, and with old Equity Rule 86, which was supplanted by Rule 71, under which it is held that fact findings have no place in a judgment.

United States v. Goldstein (CCA 8), 271 Fed. 838-845.

Linde Air Products Co. v. Dry Dock and Repair Co. (CCA 2), 246 Fed. 834-836.

Larkin Packer Co. v. Hinderleiter Tool Co. (CCA 10), 60 Fed. (2d) 491-494, citing authorities.

The incorporation of a large number of "findings" is "an especial barbarism."

Elliott Addressing Machine Co. v. Addressing Typewriter Stencil Co. (CCA 2), 31 Fed. (2d) 282.

The incorporation of "agreed facts" in a decree violated former Rule 71.

Kansas City Life Insurance Co. v. Shirk (CCA 10), 50 Fed. (2d) 1046.

Recitals of fact or reasons for the decree have no place in it.

Triplex Shoe Co. v. Cantor (DC Pa. 1939), 27 Fed. Supp. 295.

E.

Findings of fact under Rule 52, or under its predecessor, Equity Rule 70^{1/2}, are solely for the convenience of an appellate court entertaining a direct appeal, and are not jurisdictional.

Tulsa City Lines v. Mains (CCA 10), 107 Fed. (2d) 377-382.

Citing Brown v. Metropolitan Life Insurance Company (App. D. C.), 100 Fed. (2d) 98-99.

Findings of fact are not even final on the entering of the judgment and are subject to correction by the same Court.

Federal Rules of Procedure, Rule 52.

Even an irreconcilable contradiction between findings of fact and the judgment does not impeach the judgment or render it subject to collateral attack.

Milliken v. Meyer, 311 U. S. 457-462, 85 L. Ed. 278-283.

"Findings of fact are not a jurisdictional requirement of appeal which this Court may not waive. Their purpose is to aid Appellate Courts in reviewing the decision below." *Hurwitz v. Hurwitz* (CADC), 136 Fed. (2d) 796-799.

Goodacre v. Panagopoulos (CADC), 110 Fed. (2d) 716.

II.

Regardless of whether the Court below had jurisdiction to interpret the corporate reorganization provisions of the Chandler Act, it has in fact placed an interpretation thereon which is almost certain to thwart the purposes of Congress.

A.

Congress intended to vest control in a single court.

"There are cogent reasons why reorganization courts must have full dominion of property of debtor."

Swanstron—Chap. X, etc. (1939), p. 11.

Property must be assembled: Ample jurisdiction is provided without ancillary proceedings.

Report Jud. Comm. H. R., July 29, 1937.

Jurisdiction of reorganization courts is exclusive and supersessive to jurisdiction of all other courts.

Emil v. Hanley, 318 U. S. 515-522, 87 L. Ed. 954-956.

Throughout the United States as against any state or federal receiver in any other court.

In re Grayling R. Corp (CCA 2), 74 Fed. (2d) 734

Prior restrictions on jurisdiction of reorganizing courts, modified. Rules of Comity relaxed by Chandler Act.

Warder v. Brady (CCA 4), 115 Fed. (2d) 89.

Centralization of judicial administration in one court demanded; ordinary bankruptcy proceedings and equity receiverships are plainly superseded.

Reorganization court takes over property in possession of any trustee appointed by federal, state or foreign court.

"The term clearly includes a trustee in ordinary bankruptcy."

Finleiter—Prin. of Corp. Reorg. (1937), p. 139.

B.

Congress did not intend to exclude ordinary bankruptcy proceedings from the sweeping and superseding jurisdiction of reorganizing courts.

"Sec. 111—The Court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located."

11 USCA 511.

"Sec. 113—Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed of a **prior pending bankruptcy * * ***" (Emphasis added.)

11 USCA 513.

"Sec. 148—Until otherwise ordered by the judge, an order approving a petition shall operate as a **stay of a prior pending bankruptcy * * ***" (Emphasis added.)

11 USCA 548.

An order approving a petition which has become final without an appeal is conclusive of the jurisdiction of the Court. Even on direct attack.

Sec. 149 (11 USCA 549).

And Court is vested with the powers of a court of the United States which has appointed a receiver of an insolvent debtor.

Sec. 115 (11 USCA 515).

C.

There is an irreconcilable conflict between the purposes of ordinary bankruptcy and reorganization, and the two proceedings are mutually destructive and may not proceed simultaneously.

Ordinary bankruptcy contemplates prompt liquidation for the benefit of creditors.

Sec. 47 (a), 11 USCA 75a (1).

Reorganization contemplates conservation of a going business and preservation of good will.

Sec. 156, 11 USCA 556.

In the public interest and to avoid economic effect of liquidation.

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 84 L. Ed. 110.

The refusal of the Indiana Court to recognize the superseding jurisdiction of the Missouri Court has delayed the reorganization of the parent corporation as well as its subsidiaries for nearly two years.

The assertion of jurisdiction by the Indiana Court collaterally to adjudge the power of the Missouri Court and the conditions under which it might properly adjudge a debtor's petition has led to an absurd result not contemplated by Congress.

The Missouri order approving National's petition was entered April 19, 1944. It was not directly attacked or modified. It is conclusive on the jurisdiction of the Missouri Court:

"Sec. 149—An order, which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court."

11 USCA 549.

But that conclusive judgment is declared a nullity on "jurisdictional" grounds by the Indiana Court, whose jurisdiction was stayed automatically by the judgment.

As a result the judgment of the Missouri Court is void in Indiana; valid and exclusive every other place. The National is a "debtor" and a "bankrupt", is being liquidated in Indiana and reorganized in Missouri and elsewhere.

D.

Section 129 is merely a venue statute, and the venue or place the action is brought is not jurisdictional.

The National was a corporation, and no other petition for reorganization by or against it was pending in any other Court.

Sec. 106 (13), 11 USCA 506 (13).

Sec. 126, 11 USCA 526.

The petition was for reorganization.

Sec. 106 (9), 11 USCA 506 (9).

As a subsidiary it was expressly and unconditionally entitled to file in the same Court.

"Sec. 129—If a corporation be a subsidiary an original petition by or against it may be filed, either as provided in Section 128 of this Act or in the court which has approved the petition by or against the parent corporation." (Emphasis added.)

11 USCA 529.

The use of the adjective "original" does not alter the meaning of the noun "petition" which it modifies. "Peti-

tion" is defined. It is a "petition filed under this Chapter * * * proposing that a plan of reorganization be effected."

Sec. 106 (9), 11 USCA 506 (9).

The primary purpose of the Act was to secure administration of the subsidiary in the same Court in which the parent proceeding was pending.

In re Realty Securities Corp., 55 Fed. Supp. 546.

III.

Conclusion.

The conclusion of the Court below is not based on any sound principle, and does not purport to be based on any cited precedent. It is at best based on a distorted construction of the rules of res judicata, or violates them, and are a forced construction of the statutes, or an "inappropriate precept" of comity.

"The response of Congress to the need for corporate reorganization in a just and orderly manner must be productive of benefit if the courts interpret Chapter X free from any inappropriate precepts." (Emphasis added.)

Mr. Walter Chandler. Foreword to Swanstron: Corporation Reorganization under Federal Statutes (1938).

ARGUMENT.

I.

The unambiguous judgment order of the Missouri Court was res judicata and binding on the Indiana Court and effectively stayed its power to sell National's assets. A court of original jurisdiction only, the Indiana Court was without power to review the Missouri judgment.

The theory of the Court below was, in effect, that because the Indiana Court had acquired jurisdiction over the property as a result of a pending ordinary bankruptcy proceeding, it had jurisdiction to review the order of the Missouri Court superseding that jurisdiction and reinterpret the provisions of Chapter X of the Chandler Act, which they deemed applicable to the case, and to deny or give effect to the unambiguous mandate of the judgment according to whether or not the Missouri judgment was supported by fact findings or by extrinsic evidence of facts, without proof of which, as the Court below construed the law, the Missouri Court was without "jurisdiction" to approve the subsidiary debtor petition or to stay the ordinary bankruptcy proceedings in the Indiana Court.

The petitioners submit that the purported "jurisdictional facts," the omission of which from the "findings" it is urged, destroys the effectiveness of the judgment collaterally are not jurisdictional at all, in the sense that their omission would render the judgment subject to collateral assault, or even on direct appeal. The ultimate fact was the conclusion that National was a fit corporation and entitled to petition in the Missouri Court. When or how it became a subsidiary are evidentiary facts. The conclusion of the Court below is based upon its own interpretation of the substantive law and its own conclusion as to the "right" of National to petition and the conditions under which the Missouri Court ought or ought not to have approved the subsidiary debtor petition. The interpretation of the substantive law of reorganization was never an issue in the Indiana Court; it was an issue in the Missouri Court. The question as to when or how the National became a subsidiary of Christopher was never an issue in the Indiana Court and the evidence or the weight and sufficiency of the evidence before the Missouri Court was never be-

fore the Indiana Court, or determinable by it or the Court below on review of the Indiana Court's decision. These questions were all questions for the Missouri Court and constituted the legal and factual basis of its judgment on the merits. The Court below simply reviewed the proceedings of the Missouri Court for error without a record.

The conclusion of the Court below is inconsistent with the status and dignity of the Missouri Court as a Court of the United States, and in excess of its own jurisdiction as a collateral court.

A.

Constitution and jurisdiction of the respective courts.

While both courts involved are District Courts of the United States and as designated courts of bankruptcy vested with such general jurisdiction as will enable them to exercise original jurisdiction under the Chandler Act; [Section 1a, 2a (11 USCA 1a, 11a)], nevertheless such general jurisdiction may not be exercised in any case until invoked by a petition. And therein lies the distinction, disregarded by the Court below, between the jurisdiction of the Missouri Court and the jurisdiction of the Indiana Court and the reason why the Missouri Court had exclusive jurisdiction to interpret the law applicable to reorganization proceedings as an original proposition while the Indiana Court was bound by the rules of res judicata to accept the Missouri Court's interpretation. Both Courts in a broad sense had general jurisdiction as courts of bankruptcy under the Chandler Act, but their jurisdiction was not concurrent in the respective cases. The Indiana Court's jurisdiction had been invoked and it was proceeding in ordinary bankruptcy, but in the exercise of that jurisdic-

tion it was not authorized to review, control or supersede proceedings of bankruptcy courts, proceeding under Chapter X.

The Missouri Court's jurisdiction, on the contrary, had been invoked, and it was proceeding under Chapter X or the reorganization provisions of the Chandler Act upon a petition for corporate reorganization by National, an alleged subsidiary of Christopher, whose debtor petition had been approved by the Missouri Court.

Securities Ex. Com. v. U. S. Realty and Imp. Co.,
310 U. S. 434-446, 84 L. Ed. 1293-1299.

Pennsylvania v. Williams, 294 U. S. 176-180, 79
L. Ed. 841-845.

Ipsa facto upon the filing of a petition proposing that a "plan of reorganization be effected" [Sec. 106 (9)] the Missouri Court was vested with complete jurisdiction:

"Sec. 111. Where not inconsistent with the provisions of this chapter, the Court in which a petition is filed shall, for the purpose of this chapter, have exclusive jurisdiction of the debtor and its property wherever located."

11 USCA 511.

And included in that jurisdiction was enumerated the power to stay ordinary bankruptcy proceedings:

"Sec. 113. Prior to the approval of a petition the Judge may, upon cause shown, grant a temporary stay, until the petition is approved or dismissed, of a prior proceeding in bankruptcy * * *" (11 USCA 513).

"Sec. 148. Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy * * *"

11 USCA 548.

"Sec. 149. An order, which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court."

11 USCA 549.

The National was a corporation, and clearly came within the general class of parties authorized to invoke the jurisdiction of the Court. There was no other petition pending by or against it under Chapter X.

"Sec. 126. A corporation * * * may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

11 USCA 526.

And the Court had general jurisdiction.

The venue provisions will be further discussed under title II, but it may be suggested here, as bearing upon the question of res judicata that a proper venue is not jurisdictional.

See comment "Principles of Corporate Reorganization (1937) Thomas K. Finleiter," p. 585, wherein it is said:

"Under the reorganization acts an improper venue should not be the basis for a semi-collateral attack. The provisions of the reorganization acts, unlike the ordinary bankruptcy provisions, do not phrase their venue requirements in terms of jurisdiction."

In the case of **Fairbanks Steam Shovel Co. v. Wills**, 240 U. S. 642-649, 60 L. Ed. 841-846, this Court ruled that an erroneous venue did not render an adjudication in bankruptcy subject to collateral attack.

The conclusion of the Court below that before the Missouri Court could have jurisdiction to approve National's petition that it must be established that National was a subsidiary on the date the parent's petition was filed has no foundation whatever in the Bankruptcy Law. Certainly it nowhere appears as a jurisdictional prerequisite and the ruling amounts to no more in any case than a reinterpretation of the substantive law by a collateral court. The Missouri Court did not declare National was not a subsidiary on December 27, 1943. The involuntary proceedings in Indiana were precipitated by the Missouri Court in the Christopher case enjoining proceedings against National in a State Court in Indiana which was before the involuntary proceedings were filed in Indiana (R. 16), and the theory that Christopher did not own National's stock on December 27, 1943, was formulated by Judge Sparks on purported evidence irregularly incorporated in his certificate by the Referee and on purported "facts" not communicated to the Court below by the record. The theory was not concurred in by any other judge. The concurrence of the judges was on the omission of the Missouri Court expressly to find that National was a subsidiary on December 27th, and was not on the conclusion of Judge Sparks that National was not a subsidiary on December 27, 1943.

B. -

The judgment of the Missouri Court was res judicata and, with all its implications, conclusive against collateral attack in the Indiana Court.

A judgment of a United States Court does not depend for its effect collaterally upon jurisdiction de jure, or

even upon the actual validity of the statute upon which the Court assumes to act or upon the precision with which the Court interprets the law or applies the facts, but upon the principles of *res judicata* and the impregnable of such judgments to collateral assault.

This Court, in the case of **Chicot County Drainage District v. Baxter State Bank**, 308 U. S. 371-377, 84 L. Ed. 329-334, ruled that a judgment of a reorganization court, rendered under a statute which was subsequently declared unconstitutional by this Court, might not be questioned in a later proceeding by a creditor whose rights were ostensibly foreclosed by the judgment.

The facts in the **Chicot** case were that a bankruptcy court had received and approved and subsequently reorganized an alleged municipal corporation under the first municipal reorganization act. In the exercise of its ostensible jurisdiction it cancelled certain bonds, among others those owned by the Baxter State Bank. The bank never at any time appeared to the action, did not file a claim on its bonds and did not participate in the plan and, of course, was never served with process. After the Act was held unconstitutional by this Court in another proceeding (*Ashton v. Cameron, etc.*, 298 U. S. 513, 80 L. Ed. 1309), the Baxter State Bank brought suit on its bonds, which it had retained. The suit was brought on the theory that the Act, under which the Court had assumed jurisdiction to cancel the bonds, being unconstitutional and void, the proceedings were a nullity. This Court, however, ruled the case, not on the validity of the Act and jurisdiction *de jure*, which obviously could not be maintained, but upon settled principles of *res judicata*. The Court said:

"The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But nonetheless they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statutes under which they are asked to act. And determinations of such questions, while open to direct review, may not be assailed collaterally." (1. c. 376.)

"They," United States Courts, "are all of limited jurisdiction; but they are not, on that account, inferior courts, in the technical sense of these words, whose judgments, taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous and may, upon writ of error or appeal, be reversed for that cause. But they are not absolute nullities." (Citing *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231.) "This rule applies equally to decrees in the District Court sitting in bankruptcy; that is purporting to act under a statute of Congress passed in the exercise of the bankruptcy power. The Court has the authority to pass upon its own jurisdiction and its decree, sustaining jurisdiction against attack, while open to direct review, is *res judicata* in a collateral proceeding. (Citing *Stoll v. Gottlieb*, 305 U. S. 165-171-172, 83 L. Ed. 104, 108, 109.)"

A like ruling was made by this Court in **Kalb v. Feuerstein**, 308 U. S. 433-439, 84 L. Ed. 370, 375, in which case this Court considered like provisions of the Frazier-Lemke Act. The Court said:

"The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy

law. If Congress has vested in the bankruptcy courts exclusive jurisdiction of farmer-debtors and their property and has by its act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its act is the supreme law of the land which all courts, state and federal, must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone."

The Court continued and said that the Act provided:

"The filing of a petition * * * shall immediately subject the farmer and all of his property, wherever located * * * to the exclusive jurisdiction of the court, including * * * the right of the equity of redemption where the period of redemption has not expired."

Compare the language just quoted from the Kalb case with the following sections of Chapter X of the Chandler Act:

"Section 111—Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction over the debtor and his property wherever located."

11 USCA 511.

It was clearly not the purpose of Congress to exclude from the reorganizing court property in the possession of ordinary courts of bankruptcy:

"Section 113—Prior to the approval of a petition, the Judge may, upon cause shown, grant a temporary stay until the petition is approved or dismissed * * * of a prior pending bankruptcy."

11 USCA 513.

"Section 148—Until otherwise ordered by the Judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy. * * *"

11 USCA 548.

"Section 149—An order which has become final approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court."

11 USCA 549.

The several circuits have likewise ruled:

"If one federal court failed to give effect to the judgment of another federal court, the Supreme Court of the United States, as head of the judicial system of the United States, would compel it to do so because 'they are many members yet but one body'."

Caterpillar Tractor Co. v. International Harvester Co. (CCA 3), 120 Fed. (2d) 82-86.

"A court has power to determine whether or not it has jurisdiction of the subject matter of a suit and of the parties thereto. As Mr. Justice Brandeis remarked in *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. Ed. 231, 'the principles of res judicata apply to questions of jurisdiction as well as to other issues'."

Rippberger v. A. C. Allyn Co. (CCA 2), 113 Fed. (2d) 332, 333.

"Whether the suit was or was not one of which the Court has jurisdiction, there was certainly power in the Court to determine the question of jurisdiction; and even if there was lack of jurisdiction, it is well settled that a judgment based on an erroneous assumption of jurisdiction would not have been void or subject to collateral attack."

Nye v. U. S. (CCA 4), 137 Fed. (2d) 73-77.

A like ruling was made in the case of *Mar-Tex Realization Corporation v. Wolfson* (CCA 2), 145 Fed. (2d) 360, 362, with an extensive citation of authorities.

The Seventh Circuit itself, in an opinion by Judge Lindley, concurred in by Judges Sparks and Major (the same two Judges who delivered the majority opinions in this case below), ruled in a 77b proceeding that reorganization courts have a jurisdiction that is "**paramount and exclusive**" and "cannot be affected by proceedings in other courts, whether state or federal," and that the only way of correcting error of the court taking jurisdiction of a reorganization proceeding is by appeal in the same action.

**Re Park Beach Hotel Bldg. Corporation (77B)
(CCA 7), 96 Fed. (2d) 886-891.**

The judgment carried with it, as against collateral attack a presumption of regularity and was not dependent upon express fact findings.

Clearly the majority Judges confirmed the power of the Indiana Referee and Judge and the Judges of the Seventh Circuit to review collaterally the legal and factual basis of the judgment of the Missouri Court and assumed to themselves power as a reviewing court to review in a collateral proceeding the final judgment of a United States Court beyond their territorial jurisdiction.

As pointed out by Judge Briggie in his dissenting opinion (R. 101-102), the question of how the stock of National was owned was never material to the ordinary proceeding in Indiana and only became material when the subsidiary debtor proceeding was filed in Missouri and may we reiterate that the proper construction of Chapter X never became material to the ordinary pro-

ceedings in Indiana. The jurisdiction to interpret the law and to determine whether or not the National was a fit subject for reorganization in the Missouri Court was for the Missouri Court and its error, if any, in determining that question was subject only to direct attack or appeal.

The ruling of the Court is in direct conflict with the rule announced and confirmed by the Supreme Court in the case of:

Milliken v. Meyer, 311 U. S. 457, 85 L. Ed. 278.

wherein the Court said that while jurisdiction over the person or the subject matter is a subject of inquiry in a collateral proceeding, that:

"the constitution precludes any inquiry into * * * the validity of the legal principles on which the judgment is based (citing authorities). Whatever mistakes of law may underlie the judgment (citing authorities) it is conclusive as to all the media concludendi,"
l. c. 462.

And in the same case this Court ruled that even an irreconcilable contradiction between the findings and the decree did not impeach or render subject to collateral attack the judgment of a court of record. This Court said:

"But if the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." (Citing authorities.) "In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." (Citing authorities.)

"Accordingly * * * the holding of the Colorado Supreme Court that the judgment was void because of an inconsistency between the findings and the decree was not warranted." (l. c. 462-463.)

We have pointed out that United States Courts are of the dignity of courts of general jurisdiction or at least are not to be considered courts of inferior jurisdiction when the judgments are assailed collaterally.

Chicot County Drainage District v. Baxter, 308 U. S. 371.

By the express provisions of Section 149 (11 USCA 549), a judgment approving a debtor petition is conclusive of the jurisdiction of the Court, even as against direct attack after the time for appeal has passed.

In re Loewers Gambrinus Brewery Co., 141 Fed. (2d) 747-9.

Mar-Tex Realization Co. v. Wolfson, 145 Fed. (2d) 360-2.

The conclusion that an unambiguous judgment depends for its effect collaterally upon express findings indicates a total misconception on the part of the Court below of the character and necessary contents of a judgment and of the proper function of fact findings.

D.

In any event fact findings are not essential to or even properly a part of a judgment,

The form of judgments is prescribed by Rule 54 of the Rules of Federal Procedure and follows closely former Equity Rule 71, which was itself a re-enactment of Rule 86 of the old equity rules promulgated March 2, 1842.

Rule 54 is made applicable to bankruptcy proceedings by General Order 37 (11 USCA following Section 53).

Rule 54 defines a judgment as a decree or order from which an appeal lies.

An appeal is authorized by Section 24a (11 USCA 48) from any order, interlocutory or final, in bankruptcy. And an order approving a debtor petition is an appealable order.

Rule 54 of the Federal Rules of Procedure provides:

"A judgment shall not contain a recital of pleadings, the report of a master or the record of prior proceedings."

As stated, Rule 54 closely follows former Equity Rule 71, which reads as follows:

"In drawing up decrees and orders, neither the bill nor answer, nor other pleadings nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: 'This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz: (here insert the decree or order)'".

In the case of **Linde Air Products Company v. Morse Dry Dock and Repair Co.** (CCA 2-1917), 246 Fed. 834-836, the Court said:

"The statement in a decree of any facts, proved or unproved, has altogether fallen into disuse, as unnecessary, except in matters of contempt, or in special

cases, or where it may be considered exceptional. Thus Rule 71 is but declaratory of good modern practice, and may be supplemented thus: The ordinary directing or mandatory part of a decree shall merely 'point out with precision what is to be done, when, where, and by whom and to or for whom'."

In United States v. Goldstein (CCA 8, 1921), 271 Fed. 838-845, Judge Trieber said:

"Findings of fact have no place in a decree in a National Court. Rule 71 of the present Equity Rules, a re-enactment of Rule 86 of the former Equity Rules promulgated March 2, 1842, prescribed the form for a decree, and, although it does not in express terms prohibit the inclusion of findings of fact in the decree, it does so by necessary implication. Only if it is necessary to make the decree more clear and specific is it proper to include findings of fact in the decree."

In Larkin Packer Co. v. Hinderleiter Tool Co. (CCA 10, 1932), 60 Fed. (2d) 491, 494, Judge McDermott said, citing numerous authorities, including the authorities hereinbefore cited in this Brief:

"But findings of fact are not part of a decree * * * The decree should contain only what the Court decrees to be done or not to be done. The decree need only 'point out with precision what is to be done, when, where and by whom and to or from whom' (citing authority). Findings of fact have no place in a decree in a National Court."

In Elliott Addressing Machine Co. v. Addressing Typewriter Stencil Corporation (CCA 2, 1929), the Court referred to the inclusion of a page and a half of so-called "findings" in an order pendente lite as an "especial barbarism."

In **Kansas City Life Insurance Co. v. Shirk** (CCA 10, 1931), 50 Fed. (2d) 1046, the Court ruled that the incorporation of agreed facts in a decree constituted a violation of former Rule 71.

Judge Dickinson in **Triplex Shoe Co. v. Cantor** (DC Pa. 1939), 27 Fed. Supp. 259, said:

"A decree should simply be a decree. Recitals, findings of fact, conclusions of law, nor the reasons for the decree have a proper place in it."

Since fact findings have no proper place in a decree, and the Court below concluded that the omission of sufficient fact findings to support the judgment rendered it ineffective collaterally, the conclusion presents the paradox that a judgment order, which in compliance with the rules of procedure omits fact findings, is of no effect collaterally. In order for a judgment to be effective collaterally a draftsman would, in violation of the rules, be compelled to incorporate fact findings in the judgment order. As a result a judgment would have to be subject to criticism locally in order to be effective collaterally.

E.

Findings of fact under Rule 52, or under its predecessor, Equity 70½, are solely for the convenience of an appellate court entertaining a direct appeal, and are not jurisdictional.

Tulsa City Lines v. Mains (CCA 10), 107 Fed. (2d) 377-382.

Citing **Brown v. Metropolitan Life Insurance Co.** (App. D. C.), 100 Fed. (2d) 98-99.

Findings of fact are not even final on the entering of the judgment and are subject to correction by the same Court.

Rule 52, Federal Rules of Procedure, which would imply, according to the reasoning below that a judgment continued in suspense until the fact findings were settled.

Even an irreconcilable contradiction between findings of fact and the judgment does not impeach the judgment or render it subject to collateral attack.

Milliken v. Meyer, 311 U. S. 457-462, 35 L. Ed. 278-283.

Contrary to the ruling of the Court below, the Court of Appeals for the District of Columbia, has expressly ruled that findings of fact are not jurisdictional:

"Findings of fact are not a jurisdictional requirement of appeal which this Court may not waive. Their purpose is to aid Appellate Courts in reviewing the decision below."

Hurwitz v. Hurwitz (CADC), 136 Fed. (2d) 796-799.
Goodacre v. Panagopoulos (CADC), 110 Fed. (2d) 716.

In any event the findings of fact required by Rule 52 are ultimate facts, not evidentiary facts to support the ultimate facts.

Brown Paper Mills Co. v. Irvin (CCA 8), 134 Fed. (2d) 337.

The ultimate fact involved in the Missouri judgment was whether or not National was a fit and proper petitioner and entitled to reorganization with Christopher as a subsidiary. The answer was in the affirmative and was expressed in the decree in unnecessary detail and was implied therein as well. The judgment would have been sufficient had it merely adjudged that the petition be approved and appointed a trustee.

We submit that the Court below by a majority of the judges simply reviewed or undertook to review the legal and factual basis of the Missouri Court's judgment, precisely as if on direct and timely appeal contrary to settled rules of law.

Being without the evidence heard in the Missouri Court, and without special findings of fact and conclusions of law, required of nisi prius judges solely for the convenience of the judges on direct appeal, the Court below was unable to review the law or facts with certainty. In the absence of a transcript the Referee and subsequently one of the judges below undertook to reconstruct the proceedings in the Missouri Court, de hors the record, but did not secure the concurrence of any other judge in that respect. Unable in fact to review the conclusions of fact and law of the Missouri Court because no transcript of the evidence or findings of fact satisfactory to the Court were incorporated in the judgment, and unable to remand the case to the Missouri Court for proper findings, the Court, by a majority of judges below, cut the Gordian knot by deciding that failure to make findings was jurisdictional.

We submit that the status of the Missouri Court, as a Court of the United States, with statutory authority to stay proceedings in ordinary bankruptcy under the cases cited precluded any inquiry by the Court below into:

"The validity of the legal principles involved on which the judgment is based * * *. Whatever mistakes of law may underlie the judgment * * * it is conclusive as to all the **media concludendi**.

Milliken v. Meyer, 311 U. S. 457, 85 L. Ed. 278.

And accordingly we submit that the judgment of the Court below and of the lower Court ought to be reversed.

II.

Regardless of whether the Court below had jurisdiction to interpret the corporate reorganization provisions of the Chandler Act, it has in fact placed an interpretation thereon which is almost certain to thwart the purpose of Congress.

A.

Congress intended to vest control in a single court.

Undoubtedly the purpose of Congress was to centralize in a single court complete and sweeping jurisdiction over debtor assets, exclusive of all other courts, state or federal, and to proceed expeditiously and economically to determine if rehabilitation could be effected. As a means to this end, Congress abandoned ancillary proceedings and vested the reorganizing court with direct control of property in the hands of officers and trustees of other courts.

As stated by Mr. Luther D. Swanstron, in his book, "Chapter X, Corporation Reorganization Under Federal Statutes" (1938):

"There are cogent reasons why the reorganization courts must have full dominion of property of a debtor under reorganization. It cannot reorganize property operated outside of its jurisdiction and without knowledge of its condition or the cost of its operation, or the possible net returns to be expected. The bankruptcy court cannot, without losing its paramountcy, become a co-tenant, it cannot effectively hold an undivided interest with some other court or person in the debtor, its property and affairs, and at the same time reorganize the debtor in its entirety." (p. 11.)

The author cited *Campbell v. Allegheny Corporation*, 75 Fed. (2d) 947, to the effect:

"Its purpose should be forwarded by a fair and liberal construction of its provisions, not thwarted by any narrow, technical interpretation, and certainly not by reading into its language conditions and limitations which the lawmakers themselves did not see fit to express."

"One of the first moves in the administration of an estate is to gather together, by possession or control, all the assets of the debtor into one place for administration to make them subject to reorganization. Ample jurisdiction is provided it without ancillary proceedings (Section 186, 111, 187, 257) and stay orders may be issued to protect the debtor and its property wherever located. Turnover orders may be required."

Report of Committee on the Judiciary to the House, July 29, 1937.

"The keynote of administration is the preservation and conservation of the debtor's business, good will and other assets, and the continuation of its business. These are the underlying principles in the cases. This is the public policy supporting Section 77b and Chapter X, with their provisions extending the jurisdiction of the Court to embrace the complete control of the debtor's assets and the strengthening of the stay or injunctive provisions of the statute."

Swanstron, Chapter X (1938), p. 105.

This Court has said:

"The jurisdiction of reorganization courts is exclusive and supersessive of the jurisdiction of all other courts to an extent not conferred upon courts of bankruptcy in ordinary proceedings."

Emil v. Hanley, 313 U. S. 515, 522, 87 L. Ed. 954-956.

"By a wide sweep of power exclusive jurisdiction of all property wherever located is given with the power to stay or enjoin 'any judicial proceeding to enforce any lien on the estate', as well as the power to stay not only the commencement, but also the continuation of suits against the debtor."

"The Court thus acquiring jurisdiction over the property of the debtor does so throughout the United States as against any state or federal receiver theretofore appointed in any other proceeding."

In re Grayling Realty Corporation, 74 Fed. (2d) 734.

In the case of *Warder v. Brady* (CCA 4), 115 Fed. (2d) 89, the Court pointed out a number of previous limitations on the power of bankruptcy courts which have been modified by the Chandler Act. Referring to the former necessity for applications to other courts and of going through a complicated procedure to acquire possession of assets, in custody of other courts, theretofore required by the rules of comity, the Court said:

"We are concerned in the pending case, however, with the Act of 1938, which was passed for the very purpose of modifying these restrictions when engaged in a reorganization proceeding under Chapter X of the statute."

"Moreover, the rule of comity is relaxed with respect to the proceedings under Chapter X."

Mr. Thomas K. Finleiter (1937) in his "Principles of Corporate Reorganization" said, referring to 77b and the statements are applicable to Chapter X, which liberalized the provisions of 77b:

"Centralization of the judicial administration of the assets in one reorganization court is demanded."

"The reorganization acts accordingly have two drastic provisions to effect these ends."

“Ordinary bankruptcy proceedings and equity receiverships are plainly superseded * * * ”

“The reorganization court by sub-paragraph (i) also takes over any property in the possession of any ‘trustee’ * * * appointed by a federal, state or foreign court. The term clearly includes a trustee in ordinary bankruptcy. Trustees may also be appointed by state courts and presumably any court officer who acquires title to the property which is the subject of the proceeding would be regarded as a trustee, as opposed to a receiver who obtains only possession” (p. 139).

B.

Congress did not intend for pending bankruptcy proceedings to interfere with the sweeping control of reorganizing courts.

“Sec. 111—The Court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located.”

11 USCA 511.

“Sec. 113—Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed of a **prior pending bankruptcy** * * * ”

11 USCA 513.

“Sec. 148—Until otherwise ordered by the judge an order approving a petition shall operate as a **stay of a prior pending bankruptcy** * * * ”

11 USCA 548.

And to emphasize the purpose to sweep aside technicalities based on jurisdictional grounds, the Act provides that an order approving a petition for reorganization which has become final without an appeal is made con-

clusive not only as to the propriety generally of the petition and order, but of the jurisdiction of the court itself.

Section 149 (11 USCA 549).

Upon approving a petition the Court is further vested with the powers of a court of the United States which has appointed a receiver in equity of the property of a debtor on the ground of insolvency or inability to meet its debts as they accrue.

Section 115 (11 USCA 515).

C.

There is an irreconcilable conflict between the purposes of ordinary bankruptcy and of reorganization, and the two proceedings are mutually destructive and may not proceed simultaneously.

In ordinary bankruptcy the proceedings are largely controlled by the creditors and in the interest of creditors [11 USCA 91 (c)] and the trustee is specifically enjoined to:

"collect and reduce to money the property and assets for which they are trustees, under the direction of the court and close up the estate as expeditiously as is consistent with the best interest of the parties in interest." [Section 47 (a) 1, 11 USCA 75 (a) 1.]

While under Chapter X the reorganizing court is authorized to conserve the assets in inquiry and even to return them to the debtor pending reorganization and operate the business. (Section 156, 11 USCA 556.)

Chapter X was enacted in the public interest to avoid the drastic deflationary effect of liquidation upon the public economy as a whole.

Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 84 L. Ed. 110.

As Mr. Swanstron stated (*supra*), a reorganization court cannot become a co-tenant with other courts and at the same time effectively reorganize a corporation. If the other court is a court in ordinary bankruptcy, the situation is impossible, and is best illustrated in the instant case.

Nearly two years ago National's debtor petition was approved by the Missouri Court in which the proceeding of its parent was pending. But the very next day the court in ordinary bankruptcy and its officers, hastily sold or attempted to sell the major portion of the subsidiary assets. As a result the reorganization of the parent, two partnership appendages and the corporate subsidiary National has been delayed.

The Indiana referee continued the hearing on the confirmation of sale and his trustee and counsel "investigated" the Missouri proceeding (R. 43) but for an unexplained reason omitted to appear and challenge directly the jurisdiction of the Missouri Court or the propriety of the order approving National's petition. Had they done so, not only the question of jurisdiction, but the question of the merits of National's petition could have been settled in a few months; as it is, we are confronted with an absurd situation. The jurisdiction of the Missouri Court to approve the petition has, by lapse of time, become conclusively established:

"Sec. 149—An order, which has become final, approving a petition filed under this chapter, shall be a conclusive determination of the jurisdiction of the Court."

11 USCA 549.

But the Missouri Court was without jurisdiction to stay the proceedings in ordinary bankruptcy, or so the Court below decided, so, the Indiana Court must liquidate National and the Missouri Court must rehabilitate it. Such a result was never contemplated by Congress and could not have resulted at all except for the fact the court in ordinary bankruptcy failed to recognize the fact that its jurisdiction in the first place was by act of Congress, and Congress has equal power to recapture or take it away, and did so by granting reorganizing courts a jurisdiction supersessive to the jurisdiction of all other courts. But the Court below, and the Indiana Court was unable to discard "inappropriate precepts" (Mr. Walter Chandler) of comity and of the dignity of the Indiana Court, and insisted on its right to review the Missouri judgment.

D.

Section 129 is merely a venue statute and venue or place the action may be brought is not jurisdictional.

There is nothing in the venue sections indicating that they were intended to restrict the jurisdiction of the Court.

Section 106 (13). "Subsidiary shall mean a corporation * * * the majority of whose stock having power to vote * * * is owned * * * by another parent corporation, a petition by or against which has been approved."

11 USCA 506 (13).

Section 106 (9). "Petition shall mean a petition filed under this Chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected."

11 USCA 506 (9).

Section 126 (Corporations). "* * * may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

11 USCA 526.

Section 129. "If a corporation be a subsidiary an original petition by or against it may be filed either as provided in Section 128 of this Act or in the Court which has approved the petition by or against its parent corporation."

11 USCA 529.

It will be noticed that Section 129 without qualification gives to a subsidiary who desires to file, or to anyone who desires to file a debtor petition against it, the unconditional option to file "in the Court which has approved the petition by or against its parent corporation."

Respondent and one of the Judges below indulged in a species of dialectics centering on the word "original" in Section 129.

The statute defines a "petition" as a petition "filed under this chapter by a debtor, creditors or indenture trustee proposing that a plan of reorganization be effected" (Sec. 106-9) (11 USC 506-9).

Having defined "petition" as a Chapter X petition, Section 129 says an "original" petition may, at the option of the party, be filed in the court which has approved

the parent petition. Although we have used the same noun, "petition," respondent says it loses its significance or gains a new significance when it is preceded by an adjective.

Original means: first or prime—the first of its kind. Original petition would in common language mean the first or prime petition filed under Chapter X, "proposing that a plan of reorganization be effected" (Sec. 106-9).

The language and words of the section should be taken in their common meaning and not tortured into a limitation on the jurisdiction of the Court calculated to make the legislation ineffective.

"Its purpose should be forwarded by a fair and liberal construction of its provisions, not thwarted by any narrow, technical interpretation, and certainly not by reading into its language conditions and limitations which the lawmakers themselves would not see fit to express."

Campbell v. Allegheny Co., 75 Fed. (2d) 947.

It is not at all certain that even a sole corporation must at all events file in a pending proceeding if one is pending, but the discussion of that question is not necessary to a consideration of this case.

A subsidiary corporation, by the very nature of its relationship to its parent corporation and other subsidiaries of the same parent, occupies a different position with respect to reorganization from that occupied by sole corporations and in many instances the parent corporation cannot be effectively reorganized without simultaneously controlling the subsidiary or its assets and Congress, in enacting old Section 77b, and the general revision thereof as incorporated in Chapter X, was con-

cerned with the effective reorganization of distressed corporations and not with perpetuating the jurisdiction of courts in particular cases over the assets of such distressed corporations. And, Congress considering the desirability if not the necessity of a common reorganization of parent corporations with their subsidiaries, struck down all prior conceptions of comity and authorized a subsidiary, either voluntarily on its own petition, or involuntarily on the petition of other interested parties, to be brought within the jurisdiction of the court reorganizing its parent without regard to pending litigations

As provided in Section 129 (11 USCA 529), a "subsidiary" (corporation whose parent is in reorganization) may petition as provided in Section 128 of the Act, which would in effect be a separate reorganization, since there is no provision in the statute by which a parent corporation may be brought into a proceeding for the reorganization of its subsidiary. Under the optional venue of Section 129, and regardless of its domicile, or the location of its assets, and regardless of pending proceedings not under Chapter X, the subsidiary is authorized to file its petition for reorganization in the court which has approved the petition by or against its parent.

The subsidiary may petition either by intervention in the parent proceeding, as in this case, or by a separate petition in the same court. It would appear that the primary purpose of the Act was to secure administration of its assets by the same Judge who was administering the estate of the parent and that it was immaterial whether that result was attained by intervention or by separate petition in the same court.

**In re Realty Associates Securities Corporation, 55
Fed. Supp. 546.**

In the report of the Senate Committee on the Judiciary, May 27, 1938, at page 25, it is stated:

"Section 129 permits an exception to the regular venue requirements in situations where the Court which already has jurisdiction of a parent corporation should also have before it any proceedings for the reorganization of its subsidiary or subsidiaries. Petitions by or against subsidiaries may be filed with the Court in which the petition involving the parent corporation has been approved."

There can be no question but that Section 129, relating to where subsidiary petitions may be filed is a mere venue statute.

Judge Sparks, the only concurring judge who discussed the statutes, referred to Section 129, as a venue statute. He said (emphasis added):

"Sub-Chapter IV of Chapter X deals with the petitions for reorganizations, including the right to file and the venue. They should be construed together" (R. 98).

It can hardly be questioned that the **right to file** goes to the merits and not to the jurisdiction of the Court. It is for the determination of that question that jurisdiction is invoked. While venue may be jurisdictional, it is not so considered in bankruptcy proceedings.

Mr. Thomas K. Finleiter in his book **Principles of Corporate Reorganization** (1937) beginning at page 585, discusses the effect of an error of venue, and points out that even in ordinary bankruptcy proceedings an adjudication cannot be collaterally assailed for an error in the place of bringing the action (p. 587), although in ordinary bankruptcy the venue appears to be phrased in terms of jurisdiction:

"Sec. 2a * * * Courts of bankruptcy are invested (with such jurisdiction) as will enable them to * * * (1) adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdiction for the preceding six months * * *."

Notwithstanding the phrasing of the venue requirements in ordinary bankruptcy this Court in the case of **Fairbanks Steam Shovel Co. v. Wills**, 240 U. S. 642-649, 60 L. Ed. 841-846, ruled that "an adjudication in bankruptcy cannot be collaterally attacked" in a case where it was urged that the adjudication was had at the wrong venue.

Mr. Finleiter continues:

"Under the reorganization acts an improper venue should not be the basis for a semi-collateral attack." (N. B. An attack in the same Court after time for direct attack has elapsed).

"The provisions of the reorganization acts, unlike the ordinary bankruptcy provisions, do not phrase their venue requirements in terms of jurisdiction."

And the statement is accurate. As applied to reorganization the statutes as to jurisdiction are as follows:

"Sec. 2a (11 USCA 11) Courts of bankruptcy * * * are * * * invested * * * with such jurisdiction * * * as will enable them to exercise original jurisdiction in proceedings under this Act * * * (9). Confirm or reject arrangements or plans proposed under this Act * * *."

"Sec. 126. A corporation * * * may, if no other petition by or against such corporation is pending under this Chapter, file a petition under this Chapter."

11 USCA 526.

"Sec. 106 (9) 'Petition' shall mean a petition filed under this Chapter by a debtor, creditors or indentured trustee proposing that a plan of reorganization be effected.

11 USCA 506-9.

"Sec. 106 (13). 'Subsidiary' shall mean a corporation * * * the majority of whose stock having power to vote * * * is owned, directly or indirectly through an intervening corporation or other medium, by another parent corporation, a petition by or against which has been approved."

11 USCA 506-13.

"Sec. 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in Section 128 of this Act, or in the Court which has approved the petition by or against its parent corporation."

11 USCA 529.

"Sec. 111. Where not inconsistent with the provisions of this Chapter, the Court in which a petition is filed shall, for the purposes of this Chapter, have exclusive jurisdiction of the debtor and its property, wherever located."

11 USCA 511.

These follow, Section 113, 114, 115, 116, and numerous other provisions giving the Court extraordinary and exclusive powers, inconsistent with the continued jurisdiction of a Court in ordinary bankruptcy, including an automatic stay of an ordinary bankruptcy and finally:

"Section 149. An order, which has become final, approving a petition under this chapter shall be a conclusive determination of the jurisdiction of the Court."

Clearly a proper venue is not jurisdictional and an erroneous venue does not render the judgment approving the petition a nullity and subject to collateral attack.

CONCLUSION.

Petitioners respectfully submit that the Court below, regardless of the theory on which it affirmed the power of the Indiana Court to sell the assets of National, in the ordinary bankruptcy proceeding after the Missouri Court had superseded that proceeding by taking jurisdiction of National and its assets in a reorganization proceeding is erroneous and in conflict with the law and the public interest.

I.

It denies full faith and credit on collateral attack to an unambiguous judgment of a Court of the United States, rendered in a cause wherein it had jurisdiction of the subject matter and of the parties, the judgment being within the scope of the general powers conferred on the Court.

II.

Contrary to the intendment of Chapter X of the Chandler Act, the judgment below subordinates the sweeping and exclusive jurisdiction of reorganization courts over debtors and their assets, and over proceedings in other courts to the judicial judgment and discretion of other courts.

It is submitted that the ruling below ought to be reversed; the order confirming the sale set aside, and the Indiana Court directed to stay all proceedings pending further orders of the Missouri Court, in accordance with

Section 148 (11 USCA 548) and that the respondent submit himself and the property in his custody to the orders of the Missouri Court.

Respectfully submitted, •

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